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To: Uniformity Sales and Use Tax Subcommittee
From: Roxanne Bland, Counsel
Date: July 17, 2008
Subject: Project: Model Statute for Administering Telecommunications
Transaction Taxes

Introduction

The issues confronting a state attempting telecommunications tax reform are varied and complex, and states that have implemented reforms have taken different approaches in doing so. For example, a state might place the responsibility of administering the tax on the state revenue agency, or it might create an entirely new government agency for that purpose. The point is that the various approaches states have taken to implement telecommunications tax reform ultimately depends on the political considerations peculiar to that state, i.e., nature of the relationship between the state and its political subdivisions.

At its March 2008 meeting, the subcommittee reviewed the initial drafts of model language developed by the drafting group regarding the centralized collection of telecommunications taxes (Proposals I, II and III). The proposals illustrate the three different models used by states that have implemented reforms used to structure their centralized collection systems. Proposal I describes the model where the tax is imposed and collected by the state; Proposal II describes the model where the tax is imposed by local governments and administered by the state; and Proposal III describes the model where the tax is imposed by local governments and centrally administered by a local authority. After much discussion, the subcommittee directed the drafting group to “flesh out” the proposals to include a list of issues raised by each model. The drafting group met by teleconference twice and submits the three proposals, as amended, for its review and discussion.

In considering the subcommittee’s directive, the drafting group decided the best way to organize these issues in a comprehensive way was to develop a complete “model statute” as the context in which to present the issues raised by each centralization model.

The group's reasoning for this format was that though the three models share many issues in common, states that have tackled reform have responded to these issues in different ways. For example, one of the common issues between the two models calling for state-level administration and collection of the tax is the agency responsible for doing so. (Proposals I and II). Though the logical choice is the revenue department, research into the existing state statutes showed that in some cases, it is not—states have created an entirely new agency to administer the tax, or have made it the joint responsibility of the revenue agency and another state agency, such as the offices of the Treasurer or Secretary of State. The key point is that the approach chosen by different state legislatures is, to some extent, reflective of the peculiar legal and political nature of the relationship between the state and local governments, i.e., the legislation is tailored to meet a state's specific situation. Given that, it would be nearly impossible to draft model language that would meet the needs of all states working for centralization. Because of that, the drafting group decided it would be better at this stage to simply present a set of three structural models to serve as vehicles by which the issues can be framed comprehensibly.

Two final notes on the format: first, it has been previously mentioned that the three proposals have much in common in terms of the elements required to design a centralized system and the issues these elements raise. So, in the interest of avoiding repetition, this memo will address the extant issues, as determined by the drafting group and to the extent practicable, in a categorical fashion instead of addressing the proposals separately. It will examine first the issues common to all three models and the various approaches that have been taken to resolve them, then those issues that may be common to two proposals, and finally the unique issues characterizing each.

Second, the subcommittee decided at its meeting in November 2007 to focus solely on the centralization issue. The other provisions, such as definitions, sourcing, etc. will be addressed at a later date. In the meantime, the drafting group recommends that whatever language is ultimately developed by the committee, it should follow the guidelines contained in the Streamlined Sales and Use Tax Agreement.

Proposals I, II and III

Section [1]. Imposition of tax.

This provision is common to all three models regardless of whether the tax is imposed on the state or local level. Here are examples of the different approaches states have taken to type and measure of tax, entities responsible for collection of tax and tax base:

Virginia

Section 58.1-648. Imposition of sales tax; exemptions.

A. Beginning January 1, 2007, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of

communications services in the amount of 5% of the sales price of each communications service that is sourced to the Commonwealth in accordance with Section 58.1-649.

Kentucky

136.616 Imposition of tax on gross revenues... ***

(1) A tax is hereby imposed on the gross revenues received by all providers.

(2) The tax rate shall be:

(a) **** (multichannel video programming)

(b) One and three-tenths percent (1.3%) of the gross revenues received for the provision of communications services, as sourced under the provisions of KRS 136.605, billed on or after January 1, 2006.

Illinois (note the differing rates depending on the size of the local jurisdiction.)

Sec. 5-15. Maximum rates.

(a) For municipalities with a population of less than 500,000, the tax authorized by this Act may be imposed at a rate not to exceed 6% of the gross charge for telecommunications purchased at retail. If imposed, the tax must be in increments of 0.25%.

(b) For municipalities with a population of 500,000 or more, the tax authorized by this Act may be imposed at a rate not to exceed 7% of the gross charge for telecommunications purchased at retail. If imposed, the tax must be in increments of 0.25%.

South Carolina¹

12-36-910(A) A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

12-36-910(B)(3)(a) gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages.

Other issues that might be relevant to an imposition statute include provisions for exemptions from tax, such as exempt services, charges or entities:

¹ The provision for the imposition of use tax is nearly identical.

Reg. 117-329. Not subject to the tax are: amortization charges for installing facilities beyond prescribed limits, restoration of service charges, attachment privileges to poles, charges for colored telephones and retractable cords (a one-time charge), charges on a cost basis for dial service between exchanges, toll charges between telephone exchanges (long distance), charges for all telegrams (local or otherwise), and charges representing Federal Communications taxes (excise taxes).

Kentucky

KRS 136.616

(4) (a) The tax imposed by this section shall apply to all providers except a municipal utility. "Municipal utility" as used in this section means a utility owned, operated, and controlled directly or indirectly by a city ***.

Virginia:

Section 58.1-648. Imposition of sales tax; exemptions.

B. The sales price on which the tax is levied shall not include charges for any of the following: (i) an excise, sales, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service that is permitted or required to be added to the sales price of such service, if the tax is stated separately; (ii) a fee or assessment levied by the United States or any state or local government, including but not limited to, regulatory fees and emergency telephone surcharges, that is required to be added to the price of service if the fee or assessment is separately stated; (iii) coin-operated communications services; (iv) sale or recharge of a prepaid calling service; (v) provision of air-to-ground radiotelephone services, as that term is defined in 47 C.F.R. Section 22.99; (vi) a communications services provider's internal use of communications services in connection with its business of providing communications services; (vii) charges for property or other services that are not part of the sale of communications services, if the charges are stated separately from the charges for communications services; (viii) sales for resale; and (ix) charges for communications services to the Commonwealth, any political subdivision of the Commonwealth, and the federal government and any agency or instrumentality of the federal government.

C. Communications services on which the tax is hereby levied shall not include the following: (i) information services; (ii) installation or maintenance of wiring or equipment on a customer's premises; (iii) the sale or rental of tangible personal property; (iv) the sale of advertising, including but not limited to, directory advertising; (v) bad check charges; (vi) billing and collection services; (vii) Internet access service, electronic mail service, electronic bulletin board service, or similar

services that are incidental to Internet access, such as voice-capable e-mail or instant messaging; (viii) digital products delivered electronically, such as software, downloaded music, ring tones, and reading materials; and (ix) over-the-air radio and television service broadcast without charge by an entity licensed for such purposes by the Federal Communications Commission. Also, those entities exempt from the tax imposed in accordance with the provisions of Article 4 (Section 58.1-3812 et seq.) of Chapter 38 of Title 58.1, in effect on January 1, 2006, shall continue to be exempt from the tax imposed in accordance with the provisions of this chapter.

An issue common to Proposals II and III are grants of authority to local jurisdiction to levy the tax authorized by the statute and preemption. Resolution of this issue depends, to some extent, on the unique legal and political relationships between the state and local jurisdictions, and their respective roles in the legislative process, especially as it pertains to preemptions. A state may, save for the tax imposed, prohibit local jurisdictions to impose any other tax or fee on the communications services covered by the statute. Or a state might take the opposite tack and continue to permit local jurisdictions to levy certain taxes and other fees, or something in between. Below are two examples illustrating the approaches taken by Florida and Illinois:

Florida

Authorization to impose local communications services tax. 202.19 (1) The governing authority of each county and municipality may, by ordinance, levy a discretionary communications services tax.

(3)(a) The tax authorized under this section includes and is in lieu of any fee or other consideration, including, but not limited to, application fees, transfer fees, renewal fees, or claims for related costs, to which the municipality or county is otherwise entitled for granting permission to dealers of communications services, including, but not limited to, providers of cable television services, as authorized in 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way for the placement, construction, and maintenance of poles, wires, and other fixtures used in the provision of communications services.

(b) This subsection does not supersede or impair the right, if any, of a municipality or county to require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a dealer of communications services.

Illinois

Sec. 5-10. Authority. The corporate authorities of any municipality in this State may tax any and all of the following acts or privileges:

(a) The act or privilege of originating in such municipality or receiving in such municipality intrastate telecommunications by a person. To prevent actual multi-municipal taxation of the act or privilege that is subject to taxation under this subsection, any taxpayer, upon proof that the taxpayer has paid a tax in another municipality on that event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section to the extent of the amount of the tax properly due and paid in the municipality that was not previously allowed as a credit against any other municipal tax. However, such tax is not imposed on such act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

(b) The act or privilege of originating in such municipality or receiving in such municipality interstate telecommunications by a person. To prevent actual multi-state or multi-municipal taxation of the act or privilege that is subject to taxation under this subsection, any taxpayer, upon proof that the taxpayer has paid a tax in another state or municipality in this State on such event, shall be allowed a credit against any tax enacted pursuant to or authorized by this Section to the extent of the amount of such tax properly due and paid in such other state or such tax properly due and paid in a municipality in this State which was not previously allowed as a credit against any other state or local tax in this State. However, such tax is not imposed on the act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by municipalities in this State.

Section 5-60. Waiver of Franchise Fees

(a) Any municipality shall be deemed to have waived its right to receive all fees, charges and other compensation that might accrue to the municipality after the effective date of this act, under any franchise agreement, license or similar agreement ***

(b) This waiver shall be effective only during the time that either the infrastructure maintenance fee or the simplified tax authorized under this Act is subject to being lawfully imposed on the telecommunications retailer, collected by the municipality² or the Department, and paid over to the municipality.

² Applies to municipalities with a population of 500,000 or more.

(c) No portion of this Act shall be construed to have repealed or amended the prohibition on franchise fees or other charges set forth in Section 30 of the Telecommunications Infrastructure Maintenance Fee Act.

South Carolina

Section 58-9-2240. Other than (1) the permit fee imposed in [citation] (2) the business license tax authorized in [this Act], (3) ad valorem property taxes, and (4) franchise fees as defined and regulated under 47 U.S.C. Section 542:

(1) no municipality shall levy any tax, license, fee, or other assessment on, with respect to, or measured by the receipts from any telecommunications service, or on telecommunications companies;

(2) no municipality shall require any provider of telecommunications services to enter into or extend the term of a franchise or other agreement which requires the payment of a franchise fee;

(3) no municipality shall enforce any provision of any ordinance or agreement to the extent that the provision obligates a provider of telecommunications services to pay to the municipality a franchise fee or any other tax, license, or fee that is not also applicable to general business activities in this State.

Section [3]. Administration of Tax (Proposals I and II; section [5] in Proposal III)

The approaches states have taken to the issues raised by this provision have been quite varied, and like above, are the most likely to turn on the existing legal and political relationships between the state and localities. As mentioned elsewhere in this memo, the collection and administrative authority does not always lie solely with the state revenue agency. In some states, the revenue agency will bear responsibility for collecting the tax, but the responsibility for managing the funds so collected (including provisions for segregating the funds collected by the state on behalf of the local jurisdictions from the general funds, which in itself might take a number of different forms, from the establishment of special trust funds to the establishment of a separate account within the revenue agency (generally in the case where collection and administration responsibility lies with the revenue agency). Another issue raised by this provision requiring resolution is the manner in which the tax collected will be distributed to local jurisdictions, i.e., will distributions be calculated on the basis of a formula, or by requiring the taxpayer to report to the state the amounts collected for each local jurisdiction, etc.,

One of the most important issues pertaining to Proposals I and II is the procedure for determining the proper jurisdiction. The Streamlined Sales and Use Tax Agreement addresses this question. IL also thoroughly addressed this issue in its Simplified Municipal Tax Act. Finally, there is the question of compensation to the revenue agency's costs to administer the tax.

Examples:

Virginia

Section 58.1-646. Administration of chapter.

The Tax Commissioner shall administer and enforce the collection of the taxes and penalties imposed by this chapter.

Section 58.1-662. Disposition of communications sales and use tax revenue; Communications Sales and Use Tax Trust Fund; localities' share.

A. There is hereby created in the Department of the Treasury a special nonreverting fund which shall be known as the Communications Sales and Use Tax Trust Fund (the Fund). The Fund shall be established on the books of the Comptroller and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the funds shall be credited to the Fund. After transferring moneys from the Fund to the Department of Taxation to pay for the direct costs of administering this chapter, the moneys in the Fund shall be allocated to the Commonwealth's counties, cities, and towns, and distributed in accordance with subsection C, after the payment (i) for the telephone relay service center is made to the Department of Deaf and Hard-of-Hearing in accordance with the provisions of Section 51.5-115 and (ii) of any franchise fee amount due to localities in accordance with any cable franchise in effect as of January 1, 2007.

B. The localities' share of the net revenue distributable under this section among the counties, cities, and towns shall be apportioned by the Tax Commissioner and distributed as soon as practicable after the close of each month during which the net revenue was received into the Fund. The distribution of the localities' share of such net revenue shall be computed with respect to the net revenue received in the state treasury during each month.

C. (Continued validity of contracts existing at the time of enactment)

D. For the purposes of the Comptroller making the required transfers, the Tax Commissioner shall make a written certification to the Comptroller no later than the twenty-fifth of each month certifying the communications sales and use tax revenues generated in the preceding month. Within three calendar days of receiving such certification, the Comptroller shall make the required transfers to the Communications Sales and Use Tax Trust Fund.

E. (Errors in distribution and correction)

Kentucky

136.634 Administration by the department.

The department shall administer the provisions of [this Act] and shall have all of the powers, rights, duties, and authority with respect to the assessment, collection, refunding, and administration of the taxes levied by this chapter, conferred generally upon the department by the Kentucky Revised Statutes ***.

136.648 Gross revenues and excise tax fund and state baseline and local growth fund -- Creation and administration of funds.

(1) There is established in the State Treasury a gross revenues and excise tax fund. The fund shall be held and administered by the Finance and Administration Cabinet. The cabinet shall invest money in the fund in the same manner as money in the state general fund.

(2) There is established in the State Treasury a state baseline and local growth fund. The fund shall be held and administered by the Finance and Administration Cabinet. The cabinet shall invest money in the fund in the same manner as money in the state general fund.

(3) All revenue from the tax imposed under [this Act] including all penalties and interest attributable to the nonpayment of the tax or for noncompliance with [citations] shall be deposited into gross revenues and excise tax fund. Amounts deposited in the gross revenues and excise tax fund shall be allocated among the state, political subdivisions, school districts and special districts as provided in [citations].

(4) All money in the gross revenues and excise tax fund designated for distribution to political subdivisions under [citations]:

(a) Shall not be withheld or reduced by the General Assembly or any state agency for any reason, except for adjustments provided for within [citations]; and

(b) Shall be used solely and exclusively for the provision of services to the general public, including public protection, health services, education, libraries, transportation services, and economic development. No amount shall be used for purely local purposes affecting only the inhabitants of the particular political subdivision, such as the administration of local government. Neither the General Assembly nor any state agency shall mandate how the funds are to be used.

136.652 Distribution -- Administrative costs -- Monthly hold harmless amounts.

Money in the gross revenues and excise tax fund shall be distributed monthly as follows:

(1) One percent (1%) shall be deposited in a trust and agency account created in the State Treasury to be used by the department for administration cost associated with the implementation, collection, and distribution of the tax imposed by [this Act].

(2) After the distribution required under subsection (1) of this section, the department shall distribute to each political subdivision, school district and special district the applicable monthly hold-harmless amount as calculated under [citation]. In addition, the department shall distribute one-twelfth (1/12) of the sheriff department's fixed hold-harmless amount as defined in [citation]. For tax collections received in January and February of 2006, the department shall make the distribution by April 25, 2006. For all other periods, the department shall make distribution by the twenty-fifth day of the next calendar month following the tax receipts.

(3) (satellite and broadcast services)

(4) Money remaining in the gross revenues and excise tax fund after the distribution required by subsection (3) of this section shall be transferred to the state baseline and local growth fund established in [citation].

136.650 Required participation in funds -- Computation of amounts -- Designated monthly hold harmless amount.

(1) (Local jurisdiction participation mandatory; preemption of tax collection authority)

(2) The monthly portion of the gross revenues and excise tax fund that shall be distributed to political subdivisions, school districts and special districts under [this provision] shall be computed as follows:

(a) Each political subdivision, school district and special district shall be assigned a percentage based on the amount of its collections certified under subsection (1) of this section as a ratio of the total certified amount of collections of all parties participating in the fund. This percentage shall be known as the "local historical percentage." The portion of the sheriff departments' certified collections identified in subsection (1) of this section from the tax imposed under [citation] attributable to the franchise portion of the operating property [citation], that was imposed by county governments shall be added to each county's reported collections to determine its local historical percentage;

- (b) The sheriff departments' collections certified under subsection (1) of this section that are retained by the sheriff departments as their fee for collecting the taxes shall be the sheriff departments' fixed hold-harmless amount;
- (c) Three million thirty-four thousand dollars (\$3,034,000), which represents one-twelfth (1/12) of the total potential collections, shall be designated as the "monthly hold-harmless amount"; and
- (d) Each political subdivision's, school district's, and special district's local historical percentage shall be multiplied by the monthly hold-harmless amount to determine its monthly distribution from the fund.

Utah

10-1-405 Collection of taxes by commission —Uniform interlocal agreement — Rulemaking authority —Charge for services.

10-1-405(1) Subject to the other provisions of this section, the commission shall collect, enforce, and administer any municipal telecommunications license tax imposed under this part pursuant to:

10-1-405(1)(a) the same procedures used in the administration, collection, and enforcement of the state sales and use tax...

10-1-405(1)(b) a uniform interlocal agreement:

10-1-405(1)(b)(i) between:

10-1-405(1)(b)(i)(A) the municipality that imposes the municipal telecommunications license tax; and

10-1-405(1)(b)(i)(B) the commission;

10-1-405(1)(b)(ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

10-1-405(1)(b)(iii) that complies with Subsection (2)(a); and

10-1-405(1)(b)(iv) that is developed by rule in accordance with Subsection (2)(b).

10-1-405(2)(a) The uniform interlocal agreement described in Subsection (1) shall provide that the commission shall:

10-1-405(2)(a)(i) transmit monies collected under this part:

10-1-405(2)(a)(i)(A) monthly; and

10-1-405(2)(a)(i)(B) by electronic funds transfer by the commission to the municipality;

10-1-405(2)(a)(ii) conduct audits of the municipal telecommunications license tax;

10-1-405(2)(a)(iii) charge the municipality for the commission's services under this section in an amount:

10-1-405(2)(a)(iii)(A) sufficient to reimburse the commission for the cost to the commission in rendering the services; and

10-1-405(2)(a)(iii)(B) that may not exceed an amount equal to 1.5% of the municipal telecommunications license tax imposed by the ordinance of the municipality; and

10-1-405(2)(a)(iv) collect, enforce, and administer the municipal telecommunications license tax authorized under this part pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

Illinois (Procedure for Determining Proper Taxing Jurisdiction)

Sec. 5-42. Procedure for determining proper tax jurisdiction.

(a) Tax jurisdiction information provided by a municipality upon written request from a telecommunications retailer. For purposes of this subsection (a), "telecommunications retailer" does not include retailers providing Commercial Mobile Radio Service as the term is used in the Mobile Telecommunications Sourcing Act.

(1) A municipality may provide, within 30 days following receipt of a written request from a telecommunications retailer, the following:

(A) A list containing each street name, known street name aliases, street address number ranges, applicable directionals, and zip codes associated with each street name, for all street addresses located within the municipality. For a range of street address numbers located within a municipality that consists only of odd or even street numbers, the list must specify whether the street numbers in the range are odd or even. The list shall be alphabetical, except that numbered streets shall be in numerical sequence.

(B) A list containing each postal zip code and all the city names associated therewith for all zip codes assigned to geographic areas located entirely within the municipality, including zip codes assigned to rural route boxes.

(C) A sequential list containing all rural route box number ranges and the city names and zip codes associated therewith, for all rural route boxes located within the municipality, except that rural route boxes with postal zip codes entirely within the municipality that are included on the list furnished under paragraph (B) need not be duplicated.

(D) The lists shall be printed. If a list is available through another medium, however, the municipality shall, upon request, furnish the list through such medium in addition to or in lieu of the printed lists. The municipality shall be responsible for updating the lists as changes occur and for furnishing this information to all telecommunications retailers affected by the changes. Each update shall specify an effective date, which shall be the next ensuing January 1, April 1, July 1, or October 1; shall be furnished to the telecommunications retailer not less than 60 days prior to the effective date; and shall identify the additions, deletions, and other changes to the preceding version of the list. If the information is received less than 60 days prior to the effective date of the change, the telecommunications retailer has until the next ensuing January 1, April 1, July 1, or October 1 to make the appropriate changes.

South Carolina

The administrative provisions of Proposal III are generally based on the South Carolina model, which is peculiar in that the entity responsible for administering and collecting the tax, the management of funds and the distribution of same to local jurisdictions is not the state revenue agency or any other state-level agency. In general, the state's telecommunications tax simplification act permits local jurisdictions to impose a business license tax but another provision of South Carolina law grants local jurisdictions the authority to "contract by ordinance with an individual, firm, or organization to assist the municipality in collecting property or business license taxes" (Section 5-7-300 (E)). In South Carolina, the local jurisdictions have contracted with the Municipal Association of South Carolina (MASC) to administer and collect, manage and distribute to the local jurisdictions the tax collected via an agreement executed between the local jurisdictions and the Association.

Next Steps

The subcommittee needs to make a decision on whether to direct the drafting group to develop a single, comprehensive statute for centralized administration based on one of the three models, which will subsequently require decisions to choose which of the states' "best practices" are appropriate for this approach (of which there really aren't any because the resolutions to the issues raised by one model or another is so dependent on the political relationships between the states and their localities), or to develop model language for all three approaches so as to provide states contemplating reform with a

variety of options, on a general level, to address those issues whose solution depends upon the legal and political relationship between the state and locality.

TELECOMMUNICATIONS TRANSACTION TAX ADMINISTRATION PROJECT

Centralized Collection Proposals

PROPOSAL I. State Imposition; State Administration

Section [1]. Imposition of Tax.

[Issues for consideration include, but may not be limited to:

1. What is the type and measure of tax imposed?
2. Who are the service providers responsible for collecting tax?
3. What should be included in the tax base?
4. Are there other governmental powers retained by local jurisdictions?
5. Which charges for services (if any) will be exempt from tax?
6. What entities will be exempt from the tax imposed, i.e., governmental agencies?]

Section [2]. Definitions

[For this section, the drafting group recommends definitions similar to those contained in Appendix C, Part II of the SSUTA.]

Section [3]. Administration of Tax; Distribution to Local Jurisdictions; Reimbursement of Administrative Costs.

a. The [designated agency] shall collect, enforce, and administer the tax imposed by this Act.

[The means of administering the tax could be structured in a number of ways. New administrative procedures might be established, or a state might incorporate existing procedures applicable to other taxes, such as sales and use tax. The primary concern is the how the taxes collected will be handled. For example, a state might create a special fund in which to deposit collections and from which funds would be distributed to local jurisdictions.]

b. Distribution to [local jurisdictions] of tax collected shall be calculated according to [insert formula] and shall be distributed [specify schedule of remittance] by [specify means of distribution].

c. The [designated agency] shall be entitled to recover from [specify fund source] for the costs incurred in administering the tax imposed by this Act, which shall be deducted from the [specific fund source] prior to distributions to local jurisdictions.

[Example: the statute might authorize the agency to retain a specific percentage of the tax collected.]

Section [4]. Telecommunications Sourcing Rules.

[For this section, the drafting group recommends the definitions and sourcing rules similar to those contained in §§314 and 315 of the SSUTA.]

Section [5]. Returns and Remittances

[For this section, the drafting group recommends procedures similar to those contained in §§318 and 319 of the SSUTA.]

Section [6]. Refunds; Administrative Remedies; Safe Harbors

[For this section, the drafting group recommends procedures similar to those contained in §325 of the SSUTA.]

Section [7]. Audit Procedures.

PROPOSAL II. Local Imposition; State Administration

Section [1]. Imposition of Tax.

[Issues for consideration include, but may not be limited to:

- 1. A provision granting local authorities to impose tax on telecommunications providers.**
- 2. What type of tax should be imposed and how should it be measured?**
- 3. Who are the service providers responsible for collecting tax?**
- 4. What should be included in the tax base?**
- 5. Are there other governmental powers retained by local jurisdictions?**
- 6. Which charges for services (if any) will be exempt from tax?**
- 7. What entities will be exempt from the tax imposed, i.e., governmental agencies?]**

Section [2]. Definitions

[For this section, the drafting group recommends the definitions contained in Appendix C, Part II of the SSUTA.]

Section [3]. Administration of Tax; Distribution of Tax to [Local Jurisdictions]; Recovery of Administrative Costs.

a. The [designated agency] shall collect, enforce, and administer the tax imposed by this Act.

[The means of administering the tax could be structured in a number of ways. New administrative procedures might be established, or a state might incorporate existing procedures applicable to other taxes, such as sales and use tax. The main issue, however, is the how the taxes collected will be handled. For example, a state might create a special fund in which to deposit collections and from which funds would be distributed to local jurisdictions.]

b. Distribution of tax to [local jurisdictions].

[This section requires developing a means of determining the amount if tax due each local jurisdiction. For example, a state might require a service provider to specify on its return the amount of tax collected for each local jurisdiction.]

c. The [designated agency] shall be entitled to recover from [specify fund source] for the costs incurred in administering the tax imposed by this Act, which shall be deducted from the [specific fund source] prior to distributions to local jurisdictions.

[Example: the statute might authorize the agency to retain a specific percentage of the tax collected.]

Section [4]. Telecommunications Sourcing Rules.

[For this section, the drafting group recommends the definitions and sourcing rules contained in §§314 and 315 of the SSUTA.]

Section [5]. Returns and Remittances

[For this section, the drafting group recommends procedures similar to those contained in §§318 and 319 of the SSUTA.]

Section [6]. Procedure for Determining Proper Tax Jurisdiction

[For this section, the drafting group recommends the procedures similar to those contained in §305 of the SSUTA.]

Section [7]. Refunds; Administrative Remedies; Safe Harbor

[For this section, the drafting group recommends procedures similar to those contained in §325 of the SSUTA.]

Section [8]. Audit Procedures

PROPOSAL III. Local Imposition; Local Administration

Section [1]. Imposition of Tax

[Issues for consideration include, but may not be limited to:

- 1. Grant of authority to local jurisdictions to impose tax on telecommunications services.**
- 2. Who are the service providers responsible for collecting tax?**
- 3. What should be included in the tax base?**
- 4. Are there other governmental powers retained by local jurisdictions?**
- 5. Which charges for services (if any) will be exempt from tax?**
- 6. What entities will be exempt from the tax imposed, i.e., governmental 2.**

Type, measure and rate of tax imposed.

- 3. Service providers responsible for collecting tax.**
- 4. Establishing a uniform tax base.**
- 5. Other local authority.**
- 6. Certain charges exempt from tax.**
- 7. Entities exempt from tax, e.g., governmental agencies.]**

Section [2]. Definitions

[For this section, the drafting group recommends the definitions similar to those contained in Appendix C, Part II of the SSUTA.]

Section [3]. Telecommunications Sourcing Rules

[For this section, the drafting group recommends definitions and sourcing rules similar to those contained in §§314 and 315 of the SSUTA.]

Section [4]. Administration of Tax

[Issues for consideration include, but may not be limited to:

1. Administrative responsibility: One option might be to establish a new government agency. Alternatively, administration might be accomplished through contractual agreements between local jurisdictions and a private organization.

2. Procedures to determine proper taxing jurisdiction. It is anticipated that local jurisdictions will develop procedures similar to those contained in §305 of the SSUTA.

Section [6]. Returns and Remittances

[For this section, it is anticipated that local jurisdictions will develop procedures similar to those contained in §§318-319 of the SSUTA.]

Section [7]. Refunds; Administrative Remedies; Safe Harbor

[For this section, it is anticipated that local jurisdictions will develop procedures similar to those contained in §325 of the SSUTA.]

Section [8]. Audit Procedures

[For this section, it is anticipated audits will be conducted by the entity authorized to administer the tax.]

APPENDIX

Streamlines Sales and Use Tax Agreement—April 2008 **Appendix C, Part II—Definitions**

TELECOMMUNICATIONS

Tax Base/Exemption Terms

“Ancillary services” means services that are associated with or incidental to the provision of “telecommunications services”, including but not limited to “detailed telecommunications billing”, “directory assistance”, “vertical service”, and “voice mail services”.

“Conference bridging service” means an “ancillary service” that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include the “telecommunications services” used to reach the conference bridge.

“Detailed telecommunications billing service” means an “ancillary service” of separately stating information pertaining to individual calls on a customer’s billing statement.

“Directory assistance” means an “ancillary service” of providing telephone number information, and/or address information.

“Vertical service” means an “ancillary service” that is offered in connection with one or more “telecommunications services”, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including “conference bridging services”.

“Voice mail service” means an “ancillary service” that enables the customer to store, send or receive recorded messages. “Voice mail service” does not include any “vertical services” that the customer may be required to have in order to utilize the “voice mail service”.

“Telecommunications service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

- A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;
- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;
- H. "Ancillary services"; or
- I. Digital products "delivered electronically", including but not limited to software, music, video, reading materials or ring tones.

"800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

"900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the Federal Communications Commission.

"Fixed wireless service" means a "telecommunications service" that provides radio communication between fixed points.

"Mobile wireless service" means a "telecommunications service" that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by

way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.

“Paging service” means a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

“Prepaid calling service” means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

“Prepaid wireless calling service” means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

“Private communications service” means a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Value-added non-voice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

Modifiers of Sales Tax Base/Exemption Terms

The following terms can be used to further delineate the type of “telecommunications service” to be taxed or exempted. The terms would be used with the broader terms and subcategories delineated above.

“Coin-operated telephone service” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

“International” means a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“Interstate” means a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

“Intrastate” means a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

“Pay telephone service” means a “telecommunications service” provided through any pay telephone.

“Residential telecommunications service” means a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, “telecommunications service” is considered residential if it is provided to and paid for by an individual resident rather than the institution.

The terms “ancillary services” and “telecommunications service” are defined as a broad range of services. The terms “ancillary services” and “telecommunications service” are broader than the sum of the subcategories. Definitions of subcategories of “ancillary services” and “telecommunications service” can be used by a member state alone or in combination with other subcategories to define a narrower tax base than the definitions of “ancillary services” and “telecommunications service” would imply. The subcategories can also be used by a member state to provide exemptions for certain subcategories of the more broadly defined terms. A member state that specifically imposes tax on, or exempts from tax, local telephone or local telecommunications service may define “local service” in any manner in accordance with Section 327 of the Agreement, except as limited by other sections of this Agreement.

Compiler’s note: On April 16, 2005 the telecommunications definitions were added to the Agreement. Member states shall adopt and utilize these definitions no later than January 1, 2008.

Streamlined Sales and Use Tax Agreement—April 2008

Section 314: TELECOMMUNICATION AND RELATED SERVICES SOURCING RULE

A. Except for the defined telecommunication services in subsection (C), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

B. Except for the defined telecommunication services in subsection (C), a sale of telecommunications services sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

C. The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

1. A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.
2. A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
3. A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with Section 310. Provided however, in the case of a sale of prepaid wireless calling service, the rule provided in Section 310, subsection (A)(5) shall include as an option the location associated with the mobile telephone number.
4. A sale of a private communication service is sourced as follows:
 - a. Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.
 - b. Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

c. Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

d. Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

D. The sale of Internet access service is sourced to the customer's place of primary use.

E. The sale of an ancillary service is sourced to the customer's place of primary use.

Compiler's note: On April 16, 2005 Section 314, subdivision (C)(3) was amended by inserting "or a sale of a prepaid wireless calling service" after "service" in the first line; and by deleting "mobile telecommunications service that is a prepaid telecommunications" and inserting "prepaid wireless calling" in its place. Member states shall comply with this amendment no later than January 1, 2008. Compiler's note: On December 14, 2006 Section 314 was amended by the addition of D and E.

Streamlined Sales and Use Tax Agreement—April 2008

Section 315: TELECOMMUNICATION SOURCING DEFINITIONS

For the purpose of Section 314, the following definitions apply:

A. "Air-to-Ground Radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

B. "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including but not limited to "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".

C. "Call-by-call Basis" means any method of charging for telecommunications services where the price is measured by individual calls.

D. "Communications Channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

E. "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under Section 314. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

F. "Customer Channel Termination Point" means the location where the customer either inputs or receives the communications.

G. "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

H. "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

I. "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

J. "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential

street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

K. "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

L. "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

M. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

N. "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

O. "Service address" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.
2. If the location in subsection (O)(1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.
3. If the location in subsection (O)(1) and subsection (O)(2) are not known, the service address means the location of the customer's place of primary use.

Compiler's note: On April 16, 2005 Section 315 (J) was amended by inserting “, except a prepaid wireless calling service,” after “telecommunications service in the second sentence. The former 315 (L) and (M) were renumbered 315 (M) and (N) and a new Section 315 (L) was inserted. The cross references in 315 (N) were changed to account for the renumbering. Member states shall comply with amendments to this section no later than January 1, 2008. Compiler's note: On December 14, 2006 Section 315 was amended to add a new subsection B “ancillary services” and a renumbering of the remaining subsections and cross references.

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Section 318: UNIFORM TAX RETURNS

Each member state shall:

- A. Require that only one tax return for each taxing period for each seller be filed for the member state and all the taxing jurisdictions within the member state.
- B. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
- C. Allow any Model 1, Model 2, or Model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.
- D. Allow any seller that is registered under the Agreement, which does not have a legal requirement to register in the member state, and is not a Model 1, 2, or 3 seller, to submit its sales and use tax returns as follows:
 - 1. Upon registration, a member state shall provide to the seller the returns required by that state.
 - 2. A member state may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.
 - 3. In addition to the returns required in subsection (D)(2), a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.
- E. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.
- F. Require, at each member state's discretion, all Model 1, 2, and 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004.

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Section 319: UNIFORM RULES FOR REMITTANCES OF FUNDS

Each member state shall:

- A. Require only one remittance for each return except as provided in this subsection. If any additional remittance is required, it may only be required from sellers that collect more than thirty thousand dollars in sales and use taxes in the member state during the preceding calendar year as provided herein. The state shall allow the amount of any additional remittance to be determined through a calculation method rather than actual collections. Any additional remittances shall not require the filing of an additional return.
- B. Require, at each member state's discretion, all remittances from sellers under Models 1, 2, and 3 to be remitted electronically.
- C. Allow for electronic payments by both ACH Credit and ACH Debit.
- D. Provide an alternative method for making "same day" payments if an electronic funds transfer fails.
- E. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the next succeeding business day.
- F. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

Compiler's note: On October 1, 2005 the second sentence in Section 319(A) was amended as follows: "The state shall allow the amount of the any additional remittance shall to be determined through a calculation method rather than actual collections. Any additional remittances and shall not require the filing of an additional return." The amendment to this section became effective upon adoption.

Streamlined Sales and Use Tax Agreement—April 2008

Section 325: CUSTOMER REFUND PROCEDURES

A. These customer refund procedures are provided to apply when a state allows a purchaser 10 to seek a return of over-collected sales or use taxes from the seller.

B. Nothing in this section shall either require a state to provide, or prevent a state from 12 providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.

C. These customer refund procedures provide the first course of remedy available to 17 purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

D. In connection with a purchaser's request from a seller of over-collected sales or use 23 taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller: i) uses either a provider or a system, including a proprietary system, that is certified by the state; and ii) has remitted to the state all taxes collected less any deductions, credits, or collection allowances.